



U.S. Department of Justice

Environment and Natural Resources Division

COPY

DJ#90-11-2-1109

Environmental Enforcement Section

P.O. Box 7611

Washington, DC 20044-7611

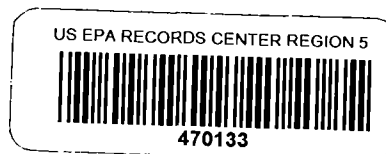
Telephone (202) 616-6552

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May 13, 1998

VIA OVERNIGHT MAIL

W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
333 Ionia Avenue, N.W.
Suite 501
Grand Rapids, Michigan 49503



Re: United States v. Decker Manufacturing Corp., Civil No.
_____, (W.D. Mich.) – Filing of Complaint,
Proposed Consent Decree and Notice of Lodging.


Dear Francesca:

As I indicated in my voicemail message to you on May 12, 1998, I enclose an original and two copies of the following documents:

1. Complaint in United States v. Decker Manufacturing Corp.;
2. Proposed Consent Decree between the United States and Decker Manufacturing Corp.;
3. Notice of Lodging of Proposed Consent Decree; and
4. Certificate of Service.

Please file these documents with the Clerk of Court upon your receipt. Also, please note the signature line for you on all documents. Once a Civil Action No. is assigned to this matter, please serve the documents on the counsel indicated on the Certificate of Service. These are all counsel in the City of Albion case, Civil Action No. 1:97-CV-1037, including counsel for

Decker Manufacturing Corp. Thank you very much for your assistance in this matter. If there are any questions, or if you require any additional information, please do not hesitate to contact me.

Sincerely,

Francis J. Biros
Trial Attorney
Environmental Enforcement Section

cc: Kathleen K. Schnieders, Asst. Regional Counsel, U.S. EPA.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| DECKER MANUFACTURING |) | |
| CORPORATION, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE PENDING
SOLICITATION OF PUBLIC COMMENT BY U.S. DEPARTMENT OF JUSTICE**

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), hereby notifies the Court that the United States is lodging with the Court a proposed Consent Decree under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9601 et seq. The Consent Decree resolves certain claims of the United States against Decker Manufacturing Corporation ("Decker") under Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), at the Albion-Sheridan Township Landfill Superfund Site located in Albion, Sheridan Township, Calhoun County, Michigan.

The United States will receive \$250,000 for past response costs incurred by U.S. EPA in connection with the Site. The Consent Decree includes a covenant not to sue by the United States under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3), for potential violations through November 12, 1997, of an administrative order issued to Decker, and others, by U.S. EPA at the Site. The Consent Decree also includes a covenant not to sue by the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of past response costs at the Site.

At this time, the Court should not sign and enter the proposed Consent Decree. Instead, the proposed Consent Decree should remain lodged with the Court while the United States provides an opportunity for public comment in accordance with U.S. Department of Justice regulations codified at 28 C.F.R. § 50.7.

The U.S. Department of Justice will publish in the Federal Register a notice that the proposed Consent Decree has been lodged with the Court. The notice will solicit public comment for a period of 30 days. During the comment period, no action is required of the Court.

After the close of the comment period, the United States

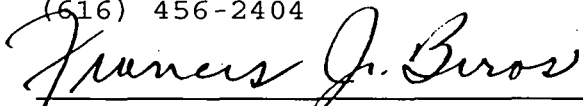
will evaluate any comments received, determine whether any comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, inadequate or improper, and advise the Court whether the United States requests that the Consent Decree be entered.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division

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United States Attorney
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OF COUNSEL:

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Chicago, Illinois 60604
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1

2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DECKER MANUFACTURING
CORPORATION,

Defendant.

CIVIL ACTION No.

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for recovery of response costs from named defendant pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, for unreimbursed costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Albion-Sheridan Township Landfill Site (the "Site"), located at 29975 East Erie Road in Sheridan Township, Calhoun County, Michigan. The United States also seeks, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaration of defendant's liability for all future response costs to be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Sections 107(a), 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9606(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to the claims in this action occurred in this district and because the Site is located in this district.

THE DEFENDANT

4. Defendant Decker Manufacturing Corporation is a corporation duly incorporated in the State of Michigan with its principal place of business located at 703 North Clark Street, Albion, Michigan, and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE ALBION-SHERIDAN TOWNSHIP LANDFILL SITE

5. Between 1966 and 1981, the Albion-Sheridan Township Landfill Site was operated as a landfill for the disposal of municipal and industrial wastes from residents and industries of the City of Albion and surrounding communities.

6. The City of Albion, Michigan contracted with the Site owner to operate the Albion-Sheridan Landfill Site and "to provide and maintain a waste yard for the use of the City of Albion residents and industries subject to such regulations for use as the City Council may prescribe," beginning in 1966 and continuing until it was closed in 1981.

7. Pursuant to the City of Albion's contract with the

landfill owner, the City of Albion paid the landfill owner for maintaining the Site as a waste yard for City of Albion residents and industries.

8. The City of Albion maintained control over and had responsibility for the use of the Site by, without limitation, setting hours of operation, dictating rates for users of the Site, approving compensation for the Site owner, and accepting fees from users of the Site.

9. During its period of operation, industrial wastes were disposed of at the Albion-Sheridan Landfill by industries in the City of Albion area including, but not limited to, Decker Manufacturing Corporation.

10. Beginning in 1986, U.S. EPA has engaged in investigations, studies, and monitoring of releases and threatened releases of hazardous substances at the Site pursuant to Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), including a remedial investigation and feasibility study of the Site and underlying groundwater.

11. The remedial investigation and feasibility study conducted by U.S. EPA resulted in the selection of a remedial action for the cleanup of the Site pursuant to the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

12. U.S. EPA's investigations determined that metal plating sludges, including heavy metals, liquid industrial wastes, including waste sludges and oils, paint wastes and thinners, oil and grease, fly ash and casting sand were disposed of at the Site.

13. The results of U.S. EPA's remedial investigation

showed the presence of volatile organic compounds, including, but not limited to, 1,2,4-trimethyl benzene, acetone and xylene, and the presence of inorganic contaminants, including, but not limited to, arsenic, chromium, lead and zinc, in the subsurface soils, leachate and groundwater at the Site.

14. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.1 et seq., were spilled, leaked, discharged, or otherwise disposed of at the Site.

15. The migration of hazardous substances into the soil and groundwater at and around the Site, and the presence of hazardous substances at the Site, constitute releases and threatened releases of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

16. On October 4, 1989, U.S. EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of priorities for response action under CERCLA, based upon relative risk of danger to public health or welfare or the environment. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA published the listing of the Site at 54 Fed. Reg. 41000, 41021 (October 4, 1989).

CLAIM FOR RELIEF

17. The allegations contained in paragraphs 1 - 16 are realleged and incorporated herein by reference.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Defendant Decker Manufacturing Corporation arranged for the disposal, or arranged with a transporter for disposal, at the Site, of hazardous substances including waste oil and waste oil

sludge that it owned or possessed, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

20. There have been releases, or threatened releases, of hazardous substances into the environment at or from the Site within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The actions taken by the United States in connection with the releases, or threatened releases, of hazardous substances at the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for which the United States has incurred, and will continue to incur costs.

22. The costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

23. As of January 31, 1997, the United States has incurred unreimbursed response costs in connection with the Site in excess of \$900,000. The United States will continue to incur costs in connection with the Site.

24. To date, the defendant has failed to reimburse the United States for any of the response costs incurred in connection with the Site.

25. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendant is jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

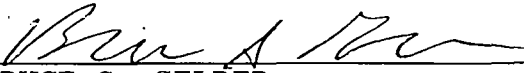
WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against defendant, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;

2. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendant is jointly and severally liable for all future response costs incurred by the United States for response actions in connection with the Site; and

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Deputy Chief, Environmental
Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

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OF COUNSEL:

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Region V

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Chicago, Illinois 60604

(312) 353-8912

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------|
| _____ |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| DECKER MANUFACTURING |) | |
| CORPORATION, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Albion-Sheridan Township Landfill Superfund Site, located at 29975 East Erie Road, Sheridan Township, Calhoun County, Michigan ("the Site").

B. The Defendant, Decker Manufacturing Corporation, that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. On October 11, 1995, U.S. EPA issued an Administrative Order, Docket No. V-W-96-C-316, to potentially responsible parties at the Site, including the Settling Defendant. The United States takes no position herein regarding the adequacy of Settling Defendant's response to the Administrative Order.

D. The United States and Settling Defendant agree, and this

Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental

Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, and all Interest on all such costs.

k. "Plaintiff" shall mean the United States of America.

l. "Section" shall mean a portion of this Consent

Decree identified by a roman numeral.

m. "Settling Defendant" shall mean the Decker Manufacturing Corporation, a corporation duly incorporated in the State of Michigan with its principle place of business located at 703 North Clark Street, Albion, Michigan.

n. "Site" shall mean the Albion-Sheridan Township Landfill Superfund site, encompassing approximately 18 acres of a 30 acre parcel, located between Michigan Avenue and East Erie Road, and bordered on the east by the Calhoun/Jackson County line in Sheridan Township, Calhoun County, Michigan, and depicted more clearly on the map included in Appendix A.

o. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$250,000 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment. Payment shall be made by FedWire

Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 05AN, and DOJ Case Number 90-11-2-1109. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Michigan, Southern Division, following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to:

Regional Financial Management Officer
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency — Region 5
Attn: Superfund Accounting
Post Office Box 70753
Chicago, Illinois 60604

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 05AN, USAO File Number _____, and DOJ Case Number 90-11-2-1109. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions) and to

Regional Financial Management Officer
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment

of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 11 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), for civil penalties and punitive damages for potential violations of the EPA Administrative Order Docket No. V-W-96-C-316 through November 12, 1997, and pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs in connection with the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person. The above covenant not to sue (and reservations of rights thereto) shall also apply to Settling

Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendant.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

12. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, or with respect to response costs it has incurred or will incur to comply with the EPA Administrative Order Docket No. V-W-96-C-316, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

13. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the

meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

14. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

15. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs. The parties agree, and by entering this Consent Decree, the Court finds, that any such protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree shall also apply to Settling

Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendant.

16. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree (other than counterclaims and crossclaims brought by Settling Defendant in an action initiated by others), it will notify EPA and DOJ in writing no later than 45 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 15 days of service of the complaint or claim upon it, and at that time, will advise the EPA and DOJ whether Settling Defendant intends to file and counterclaims or crossclaims related to this Consent Decree. In addition, Settling Defendant shall notify EPA and DOJ within 15 days of service or receipt of any Motion for Summary Judgment, and within 15 days of receipt of any order from a court setting a

case for trial, for matters related to this Consent Decree.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. CERTIFICATION OF SETTLING DEFENDANT

18. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous

substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

19. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-11-2-1109

As to EPA:

Kathleen K. Schnieders
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jon Peterson
Remedial Project Manager
Superfund Division
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendant:

Michael Caldwell
Fink Zausmer
31700 Middlebelt Road
Suite 150
Farmington Hills, Michigan 48334-0100

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION/APPENDICES

21. This Consent Decree and its appendices constitute the

final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

22. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

23. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

24. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

25. The undersigned representative of the Settling Defendant to this Consent Decree and the Chief, Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

26. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

27. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: 5/8/98

Bruce S. Gelber
Bruce S. Gelber
Deputy Chief, Environmental
Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Michael H. Dettmer
United States Attorney
Western District of Michigan

Date: _____

W. Francesca Ferguson
W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
333 Ionia Avenue, N.W.
Suite 501
Grand Rapids, Michigan 49503
(616) 456-2404

Date: 5/8/98

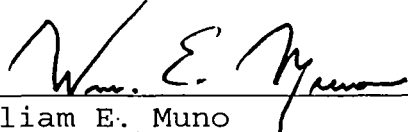
Francis J. Bifos
Francis J. Bifos
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 616-6552

THE UNDERSIGNED PARTIES enter into this consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE U. S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: _____

4/20/78



William E. Muno
Director, Superfund Division,
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604



Kathleen K. Schnieders
Assistant Regional Counsel
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR DEFENDANT DECKER MANUFACTURING CORPORATION

Date: 3-17-98

Bernard J. Kunkle

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Philip M. Moilanen

Title: Attorney

Address: Bullen, Moilanen, Klaasen & Swan, P.C.
402 Brown Street
Jackson, MI 49203-1426

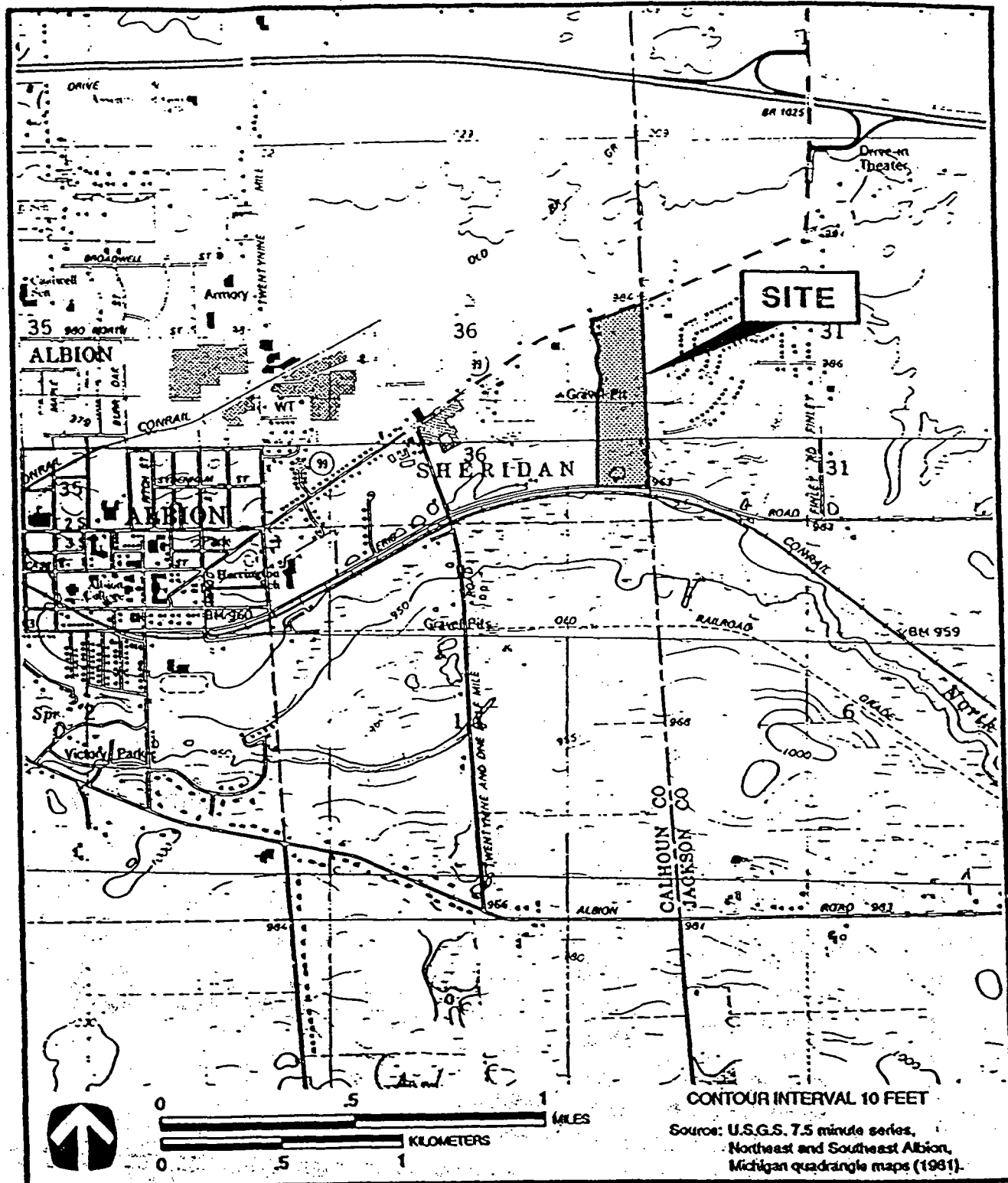


Figure 2. Topographic map of the Albion-Sheridan Township landfill, Calhoun County, Michigan.

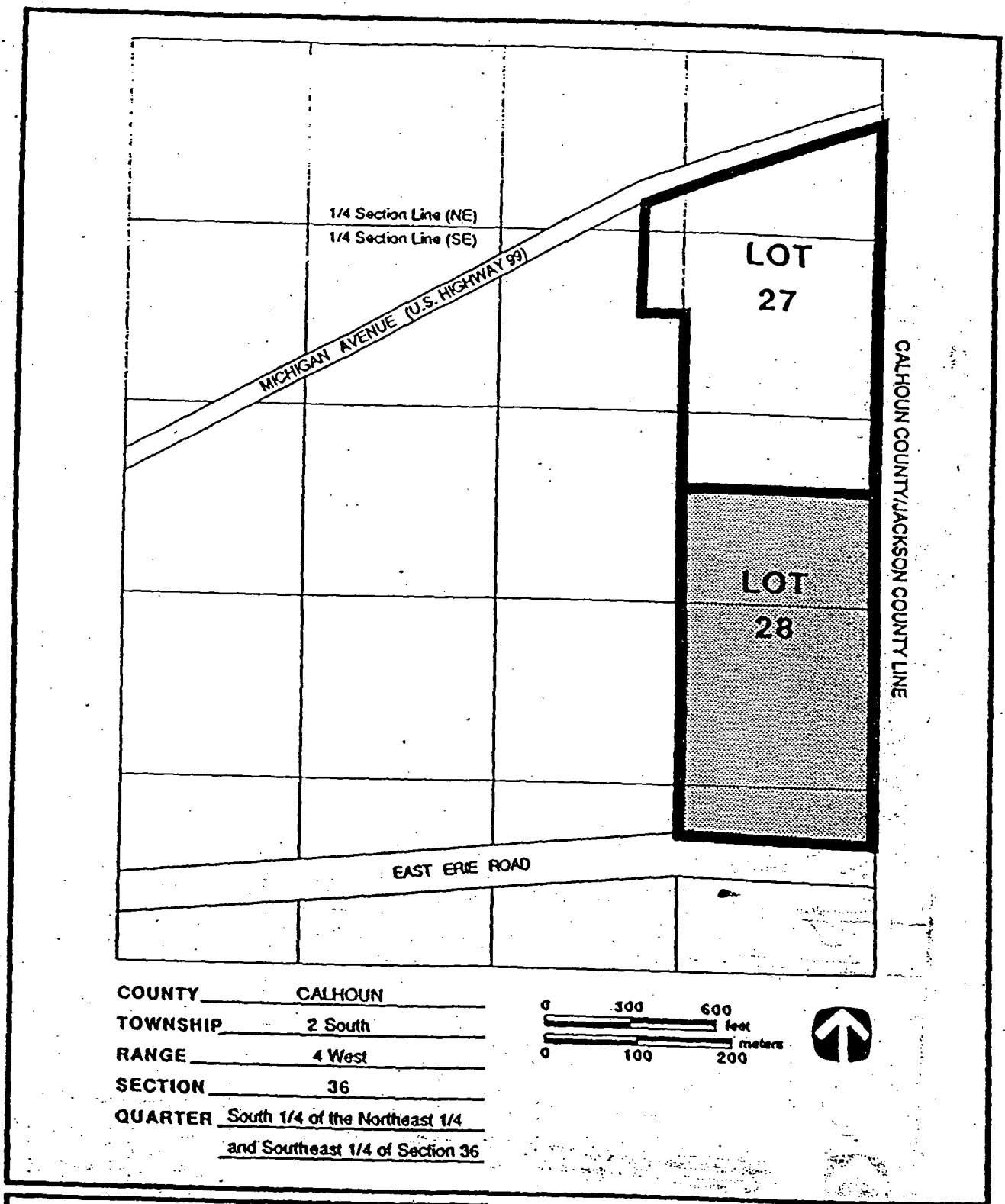


Figure 4. Lot 28, as purchased in 1953 by Gordon and Marguerite Stevick.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------|
| _____ |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| DECKER MANUFACTURING |) | |
| CORPORATION, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CERTIFICATE OF SERVICE

It is hereby certified that on the _____ day of May 1998,
copies of the foregoing Complaint, proposed Consent Decree, and
Plaintiff United States' Notice of Lodging of Proposed Consent
Decree Pending Solicitation of Public Comment by U.S. Department
of Justice were sent by first class mail, prepaid, to the
following counsel:

For the City of Albion, MI:

Charles M. Denton (P33269)
Mark M. Davis (P43529)
Varnum, Riddering, Schmidt & Howlett, L.L.P.
Bridgewater Place
P.O. Box 352
Grand Rapids, Michigan 49501-0352
(616)336-6000

For Cooper Industries, Inc. and Corning, Inc.:

Eugene E. Smary (P26811)
Melvin G. Moseley, Jr. (P44297)
Daniel K. DeWitt (P51765)
Warner, Norcross & Judd L.L.P.
900 Old Kent Building
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503
(616) 752-2000

For Decker Manufacturing Corp.:

Alan D. Wasserman (P39509)
Michael L. Caldwell (P40554)
Fink Zausmer, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334
(248) 851-4111

Philip M. Moilanen (P17874)
Bullen, Moilanen, Klaasen & Swan, P.C.
402 South Brown Street
Jackson, Michigan 49203-1426
(517) 788-8500

W. FRANCESCA FERGUSON
Assistant United States Attorney
Western District of Michigan
P.O. Box 208
Grand Rapids, Michigan 49501-0208
(616) 456-2404

Handwritten mark resembling a stylized 'A' or 'K'.

RECEIVED

MAY 18 1998

U.S. EPA, Region 5
Office of Regional Counsel